

## REMARKS

Claims 1, 2, 4-10, 14-20 and 27-34 are pending in this application. By this paper, claims 1, 5, 27, and 34 have been revised. Reconsideration of this application, in view of the foregoing amendment and the following remarks and arguments, is respectfully requested.

Independent claims 1, 5, 27, and 34 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Application Publication 2004/0093082 to Ferree in view of U.S. Patent 6,387,130 to Stone et al. ("Stone") and in view of U.S. Patent No. 6,419,706 to Graf. Applicants traverse the rejection with respect to the claims as amended for the reasons subsequently set forth herein.

### Independent claim 1

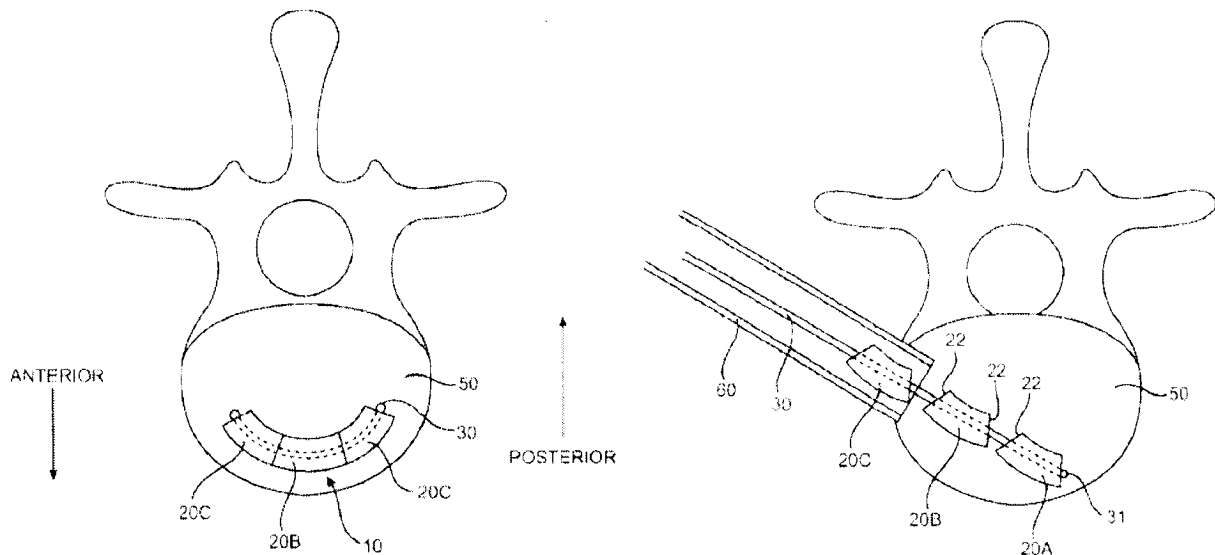
Claim 1 now recites:

A motion-preserving implant device comprising:  
a first plate comprising an outer surface for engaging with a first bone and an inner surface including both a plurality of first recessed surfaces and a concave articulation surface, the plurality of first recessed surfaces spaced outwardly apart from the concave articulation surface in a circumscribing relationship therewith;  
a second plate for engaging with a second bone, the second plate comprising a plurality of second recessed surfaces;  
a convex articulation member positioned entirely between the two plates and in direct and slidable contact with the concave articulation surface;  
a plurality of motion-controlling members each extending between an opposing pair of the first and second recessed surfaces, wherein the articulation member is separate from and stiffer than the motion-controlling members; and  
an elongated member connected to and joining the plurality of motion-controlling members, the elongated member extending between adjacent motion controlling members in a manner that maintains the spacing of the motion controlling members.

By this paper, Applicants have more particularly described the elongated member in claim 1 by adding the language, "the elongated member extending between adjacent motion controlling members in a manner that maintains the spacing of the motion controlling members."

Support for the amendment is found in the specification at least at paragraphs [0025] and [0030] of the published specification and the drawings.

The Office Action relies upon Stone for a teaching of a cord. Stone discloses advancing a plurality of intervertebral implant pieces over an elongated member through a straight cannula so that they can together form a curved assembly in an intervertebral disc space. Figs. 1 and 3 from the face of the Stone patent are reproduced below.



With reference to these figures, the specification explains implants 20A, 20B, and 20C are sequentially introduced over elongated member 30, (which may preferably comprise a wire, string, cord, tether or suture). Stone, col.3 ll.56-60. By pushing the implants together, their angled ends abut causing them to assume the C-shape in Fig. 1 above. Stone, col.3 l.66-col.4 l.2.

However, the member 30 in Stone is not configured to “extend[] between adjacent motion controlling members in a manner that maintains the spacing of the motion controlling members.” There is no teaching that the member 30 maintains the spacing of the implants in Stone. Instead, they appear to be “easily [] sequentially introduced thereover.” Stone, col.4 ll.25-28. In the absence an “elongated member extending between adjacent motion controlling members in a manner that maintains the spacing of the motion controlling members,” Stone cannot render obvious a member as claimed, and likewise, the combination of references cannot render obvious claim 1. Applicants respectfully request that the Examiner withdraw the rejection and pass claim 1 to allowance.

Independent claims 5, 27, and 34

Independent claims 5, 27, and 34 are amended to include language similar to the claim 1 amendment. Accordingly, Applicants traverse the rejections with respect to the claims as amended and submit that these claims should be allowable for the reasons discussed above. Applicants respectfully request that the Examiner withdraw the rejection and pass these claims to allowance.

Dependent Claims 2, 4, 6-10, 14-20, and 28-33

Dependent claims 2, 4, 6-10, 14-20, and 28-33 depend from and add additional features to their respective independent claims. These claims are deemed to be patentable over the prior art for at least the reasons the independent claims are allowable over the cited references.

Conclusion

An early formal notice of allowance of claims 1, 2, 4-10, 14-20 and 27-34 is requested. The Examiner is invited to telephone the undersigned if further assistance is necessary. The Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 08-1394.

Respectfully submitted,

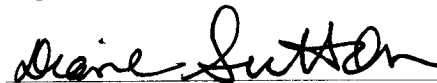


Dustin T. Johnson  
Registration No. 47,684

Date: 8/25/2009  
HAYNES AND BOONE, LLP  
Telephone: 972-739-6969  
Facsimile: 214-200-0853

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I hereby certify that this correspondence is being file with the United States Patent and Trademark Office via EFS-Web on August 25, 2009.



Diane Sutton